

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

MIIC'S & PARTNERS AMERICA : CIVIL ACTION  
INC., et al., :

Plaintiffs, :

vs. :

TOSHIBA CORPORATION, et :  
al., :

Defendants, :

-and- :

SAMSUNG DISPLAY CO., LTD., :  
Intervenor. :

----- : NO. 14-803-RGA

MIIC'S & PARTNERS AMERICA :  
INC., et al., : CIVIL ACTION

Plaintiffs, :

vs. :

FUNAI ELECTIC CO. LTD, et :  
al, :

Defendants. :

-and- :

SAMSUNG DISPLAY CO., LTD., :  
Intervenor. :

: NO. 14-804-RGA

Wilmington, Delaware  
Wednesday, January 4, 2017  
1:37 o'clock, p.m.

- - -

BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J.

Valerie J. Gunning  
Official Court Reporter

1       **APPEARANCES:**

2  
3               **PANITCH SCHWARZE BELISARIO & NADEL LLP**  
4               **BY: DENNIS JAMES BUTLER, ESQ.**

5                       **-and-**

6               **PANITCH SCHWARZE BELISARIO & NADEL LLP**  
7               **BY: BRYON T. WASSERMAN, ESQ.**  
8                       **(Philadelphia, Pennsylvania)**

9                       **Counsel for Plaintiffs**  
10                      **MiiCs & Partners America, Inc. and**  
11                      **Gold Charm Limited**

12               **DORSEY & WHITNEY (DELAWARE) LLP**  
13               **BY: ROBERT W. MALLARD, ESQ.**

14                       **-and-**

15               **DORSEY & WHITNEY LLP**  
16               **BY: PAUL T. MEIKLEJOHN, ESQ.**  
17                       **(Seattle, Washington)**

18                       **Counsel for Defendants**  
19                      **Toshiba Corporation and Toshiba America**  
20                      **Information Systems Inc.**

21               **YOUNG CONAWAY STARGATT & TAYLOR, LLP**  
22               **BY: PILAR G. KRAMAN, ESQ.**

23                       **-and-**  
24  
25

1 APPEARANCES (Continued):

2 COVINGTON & BURLING

3 BY: DAVID A. GARR, ESQ.  
4 (Washington, D.C.)

5 Counsel for Intervenor  
6 Samsung Display Co., Ltd.

7 ROSS ARONSTAM & MORITZ LLP

8 BY: BENJAMIN J. SCHLADWEILER, ESQ.

9 -and-

10  
11 KELLOGG HUBER HANSEN TODD EVANS and FIGEL

12 BY: JOHN CHRISTOPHER ROZENDAAL, ESQ.  
13 (Washington, D.C.)

14 Counsel for Defendants  
15 Funai Electric Co., Ltd.,  
16 Funai Corporation, Inc. and P&F USA  
17 Inc.

18 - - -  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

(The conference was held in chambers, beginning  
at 1:37 p.m.)

THE COURT: All right. Good afternoon. Please  
be seated.

So this is MiiCs & Partners versus Toshiba,  
No. 14-803, and MiiCs and partners versus Funai, No. 14-804.  
Is that right?

MR. BUTLER: That is correct.

THE COURT: By the way, the defendant that I  
call Funai, is that how you actually pronounce it?

MR. ROZENDAAL: Funai is how you pronounce it.  
Yes, sir.

THE COURT: Okay. All right. So, Mr. Butler,  
you have somebody different with you this afternoon.

MR. BUTLER: I do. I have Mr. Wasserman with me  
this afternoon.

THE COURT: All right. Have we met before?

MR. WASSERMAN: We have, your Honor.

THE COURT: All right. Well good to see you  
again.

MR. WASSERMAN: Thank you.

THE COURT: I see Ms. Kraman there. I see

1 Mr. Schladweiler. And --

2 MR. ROZENDAAL: Rozendaal here.

3 THE COURT: I was thinking you looked like  
4 somebody else. Well, in any event, so, Ms. Kraman, who do  
5 you have with you?

6 MS. KRAMAN: David Garr for Samsung.

7 MR. GARR: Good afternoon.

8 THE COURT: Garr?

9 MR. GARR: Yes.

10 THE COURT: And Mr. Schladweiler?

11 MR. SCHLADWEILER: I have J. C. Rozendaal.

12 THE COURT: I've certainly seen him before.

13 And, Mr. Mallard, you have with you  
14 Mr. Meiklejohn, who I know I have seen before.

15 MR. MEIKLEJOHN: Yes.

16 THE COURT: This morning.

17 Okay. So I read the little. And I guess I have  
18 some thoughts, but one thing I was curious about was  
19 defendants who went second said the plaintiffs' answer to an  
20 interrogatory was insufficient, which is a bit odd  
21 procedurally because the plaintiffs' letter didn't mention  
22 it and the defendants didn't file something that would give  
23 the plaintiffs an opportunity to respond.

24 Do you have something to say about that?

25 MR. BUTLER: Well, the issue really is the

1 limitation of references. We've agreed that we would  
2 provide an answer to the interrogatory once we have the  
3 limitation put in place.

4 THE COURT: Okay. So you in your opening letter  
5 said, and I forget what the number was, I think you said 66  
6 references, and in any event, the defendants have now said,  
7 no, no, no. No more than 36 references.

8 Do you have any comment on that?

9 MR. BUTLER: So you're right, your Honor. I  
10 don't think we're all that far apart. The real issue here  
11 is, are we going to go with 20 references, which plaintiffs  
12 had proposed total over the two cases or 36 references,  
13 which defendants and intervenors have proposed over the two  
14 cases.

15 THE COURT: So one of the questions I was  
16 wondering about, because if I -- and so it's worth stating.  
17 As probably most of you know, I do look to the Federal  
18 Circuit Bar Association or Federal Circuit Model Order,  
19 which I understand was withdrawn and had no authority, but  
20 nevertheless, it seems to me a reasonable thing to look at  
21 because it was the product of a lot of people's thought who  
22 presumably had some expertise in the area, so I often use  
23 that as a kind of starting point as to what is reasonable.  
24 But, on the other hand, one of the things that the parties  
25 all seem to be agreeing on, or I'm wondering if the parties

1 do agree on, is they're treating it like this is one case as  
2 opposed to two cases.

3 And I'm just wondering, since the defendants all  
4 have different lawyers, and since the cases are presumably  
5 going to be tried separately, whether the -- well, does  
6 anybody have any comment on this?

7 MR. GARR: I will comment on that from the  
8 defendants' side.

9 THE COURT: Okay.

10 MR. GARR: It is true that there are two cases  
11 here and three parties with Samsung Display who I represent  
12 as well as Toshiba and Funai, but we have used the idea  
13 behind the model order as a starting point, and we realize  
14 that given the fact that we have for the most part the same  
15 patents across the two cases presenting --

16 THE COURT: I mean the five that are --

17 MR. GARR: There are five in one and six in the  
18 other.

19 THE COURT: But the one that has six, that's the  
20 same five plus one. Right?

21 MR. GARR: That's right. So across the two  
22 cases, we have six patents, total, and we are working  
23 together as a defense group to try to streamline things, and  
24 can agree that we're all going to go with the same six  
25 references for per patent. That's the way we've looked at

1       it. We have six different patents. And while they all sort  
2       of relate somehow to LCD technologies, none of the patents  
3       happen to be related.

4               THE COURT: Well, I saw that you said in the  
5       letter, I think your word was "disparate," which is a nice  
6       word.

7               Do the plaintiffs disagree with that  
8       characterization of the patents?

9               MR. BUTLER: They are not in the same family.  
10       They are all directed to LCD technology essentially.

11              THE COURT: But not being --

12              MR. BUTLER: There's production.

13              THE COURT: Well, I guess what I'm wondering,  
14       perhaps a different way to say this, you know, sometimes  
15       you have a case and there are three patents and they're all  
16       the same family and one reference deals with 90 percent of  
17       each of them. I mean, the references that the defendants  
18       assert, do they assert any of the same references for any of  
19       these patents or is it each patent has its own set of  
20       references?

21              MR. BUTLER: I will let the defendants answer  
22       that one.

23              MR. GARR: That's the challenge that we're  
24       confronted with here. They're all different. There may be  
25       one or two references across the whole patents where a



1 reference may be applicable to two, but when we say  
2 disparate, they're all LCD patents. One relates to the back  
3 light. Another relates to the frame. Another relates to  
4 the method of making the transistor. Another relates to the  
5 optics and the sort of preventing, improving the view angle  
6 characteristic. So it's not like we have references that  
7 are applicable to many patents.

8 THE COURT: But just to interrupt, what you said  
9 at the beginning is essentially, if I had your invalidity  
10 contentions, the references cited for, you know, patent one,  
11 leaving aside possibly one reference, there are going to be  
12 a different set of references than patent two, which is  
13 going to be a different set of references than patent three,  
14 et cetera?

15 MR. GARR: That's right, and that's why the  
16 model order, 20 reference limit, we don't think makes a lot  
17 of sense here.

18 THE COURT: Okay. Three references per patent,  
19 which is essentially what 20 is, seems kind of skimpy if the  
20 patents are all addressing some different technology, even  
21 if it's all the general LCD ballpark.

22 So this is what I'm inclined to do. In fact,  
23 I'm pretty sure this is what I'm going to do, but let me  
24 just put it out there and I will hear from you if you or  
25 anybody wants to speak.

1 But what I'm inclined to do is to say the 36  
2 reference reduction -- what I imagine is, because I got from  
3 the letters that it didn't seem like the defendants were  
4 saying you had to answer the interrogatory before they went  
5 to 36. So what I am imagining is, they go to 36. You  
6 answer the interrogatory. Depending on what you say in the  
7 interrogatory, maybe further reduction is possible, but it  
8 seems hard to know -- hard for me to say that before you lay  
9 your cards on the table as to what's wrong with all of these  
10 references that they have, is to say that I ought to be  
11 chopping it down some more.

12 So that's what I'm inclined to do, is to say  
13 they go to 36, you answer the interrogatory, and then after  
14 you answer the interrogatory, if you've actually given a  
15 fulsome answer, and I don't mean that in any personal way,  
16 but, you know, a lot of times -- well, the first attempt  
17 said nothing, so, you know, you're starting from a low  
18 point. But if you give an answer that really does help  
19 narrow the issues, then you might by agreement or even by  
20 talking to me if you don't have an agreement, we could  
21 narrow it some more, but I don't think it should be narrowed  
22 any more right now without knowing what your problems are  
23 with the art that they're going to assert.

24 MR. BUTLER: And I can see absolutely your point  
25 in a typical case, but the difference here is all six of

1     these patents have already been through an inter partes  
2     review in front of the Patent Trial and Appeal Board with  
3     the same two defendants, the same intervenor. You would  
4     think that in that procedure, they certainly put their best  
5     foot forward.

6             THE COURT: Well, wait a second, Mr. Butler.  
7     I'm correct in thinking -- I can't remember now. The reason  
8     why we have these patents is these are the ones where the  
9     IPRs were denied. They weren't instituted. Right?

10            MR. BUTLER: That's correct.

11            THE COURT: So my general view is that  
12     non-institution is just awash. I mean, it's certainly  
13     legally just awash, but I think practically, it's just a  
14     wash, but maybe that's not the point you're making.

15            MR. BUTLER: So the references were presented to  
16     the board. There was a briefing scheduled. We laid our  
17     cards out on the table. Defendants and intervenor laid  
18     their cards out on the table with respect to invalidity.  
19     The board decided, we don't think that this should be  
20     instituted and reviewed any longer. We don't think there's  
21     a substantial likelihood of success that the defendants and  
22     intervenor will succeed with the references that they  
23     presented to us, so, no thanks. We don't even want to  
24     entertain this.

25            THE COURT: And the point of this is?

1 MR. BUTLER: That defendants have had their  
2 opportunity already with a bunch of references at the Patent  
3 Office on invalidity. We've laid our validity positions out  
4 on the table on all six of these patents already, so this  
5 isn't a typical case where you have not been through an IPR  
6 proceeding, defendants have no idea what our validity  
7 positions might be.

8 THE COURT: Well, but so one of the things is,  
9 whatever it is you said in the IPR proceedings, not exactly  
10 binding on you in a way that answering it in this  
11 interrogatory would be binding on you. Right?

12 MR. BUTLER: Well, I'm sure it's all public  
13 record. It's all part of the essential file history of the  
14 case.

15 THE COURT: Right. But the thing is, you know,  
16 you make arguments which, of course, because in the end they  
17 didn't resolve anything, they just know what the arguments  
18 you made then were. Maybe you'll make the exact same  
19 arguments. They were winning arguments, so to speak, so  
20 maybe you'll make the same arguments now, but they, you  
21 know, to speak less like a judge, you need to be locked in.  
22 Right?

23 MR. BUTLER: And maybe the defendants will  
24 present the exact same combinations of references, but I  
25 doubt it, because the Patent Trial and Appeal Board already

1 looked at the combinations and said, no thanks.

2 THE COURT: But because it has no precedential  
3 effect -- I mean, they can present the exact same things.  
4 Right?

5 MR. BUTLER: Absolutely. Absolutely.

6 THE COURT: I mean, maybe they will, maybe they  
7 won't.

8 MR. BUTLER: Right.

9 THE COURT: But in any event, you're going to  
10 get the 36. You can then lock in as to what your problems  
11 with the 36 are and, you know, again, I mean, clearly,  
12 they're never going to be actually presenting 36, but before  
13 they start going down from 36, they need to know what your  
14 arguments -- what you committed to your arguments being.  
15 Right?

16 MR. BUTLER: Absolutely. I would be surprised  
17 if they're a lot different than what --

18 THE COURT: All right. Well, that's a different  
19 thing. Yes, maybe they will be, in which case I'm sure  
20 you'll be able to answer the interrogatory without too much  
21 time passing.

22 So when are you going to reduce to 36?

23 MR. GARR: We can do that. I think we just need  
24 to -- once we know the number, make sure we get client  
25 authority. Certainly the next day or two.

1 THE COURT: All right.

2 MR. GARR: This week. By the end of the week.

3 THE COURT: Okay. So you'll reduce the 36 by,  
4 let's just say, Friday, frankly, because I'm correct in  
5 thinking when you say the client, I take it Samsung is in  
6 Korea. Toshiba is in Japan. And I guess Funai is Japan,  
7 too?

8 MR. ROZENDAAL: Yes, sir.

9 MR. GARR: We all do late night conference calls  
10 on this side of the table.

11 THE COURT: Okay. So, in any event, you know,  
12 today is Wednesday. Why don't you see if you can't reduce  
13 on Friday the 36, or by close of business on Friday.

14 When do you want to answer the interrogatory  
15 by?

16 MR. BUTLER: Two weeks sounds reasonable to me.

17 THE COURT: All right. So that's -- let me see.

18 MR. BUTLER: The 20th.

19 THE COURT: All right. Thank you. The 20th you  
20 can answer the interrogatory, and you all can confer after  
21 that.

22 I take it because you also said in there you're  
23 planning on going from 20 to 18 or maybe from 18 to 16 on --  
24 wait a second. Yes. I guess from 18 to 16 on Funai in  
25 terms of asserting claims.

1 MR. BUTLER: We could do that.

2 THE COURT: Well, so --

3 MR. BUTLER: If we are going with 36, then the  
4 inclination is not to now reduce, but if that's your Honor's  
5 position.

6 THE COURT: I think you ought to get down to 16,  
7 which, you know, why don't you just do that at the same time  
8 as you are answering the interrogatories, because that will  
9 give you the maximum chance to -- those two decisions are  
10 related, I think.

11 MR. BUTLER: Okay.

12 THE COURT: And depending on what's -- you know,  
13 when there's a responsive interrogatory, I'm not going to  
14 order you to meet and confer, but I would encourage you to  
15 discuss it as to whether some further reduction is possible  
16 and say that I will open the hearing from, I guess, the  
17 plaintiff, if it turns out that they think the combination  
18 of their interrogatory answer -- well, and if they think you  
19 really should be reducing it further from the 36. I just  
20 don't know. Okay?

21 MR. BUTLER: Can do.

22 MR. GARR: That seems right.

23 The one other thing I would raise though is that  
24 we have two weeks from Friday takes us to January 20th.

25 THE COURT: Okay.

1 MR. GARR: And that happens to be under the  
2 current schedule the deadline for our opening expert reports  
3 on which we will be going forward on invalidity.

4 THE COURT: All right. I think you probably  
5 should postpone that a little bit.

6 MR. GARR: I think we may need to talk about  
7 that.

8 MR. FOWLER: We may need to talk about that.

9 THE COURT: Is there anything else you want to  
10 talk about today?

11 MR. GARR: No.

12 MR. ROZENDAAL: Your Honor, there's one thing  
13 that came out of this morning's meeting that you had with  
14 the Toshiba defendants. I understand that there's going to  
15 be early summary judgment briefing on a license issue. We  
16 have a similar issue in the Funai case, where we think more  
17 than half of the sales are covered by a license. We talked  
18 with the other side whether it makes sense to do an early  
19 motion on that. We have not yet heard their response. But  
20 I wanted to sort of see if your Honor thought it might make  
21 sense to do those on a parallel track since they present  
22 similar issues.

23 THE COURT: I think the answer is fairly obvious  
24 what I would think, but I hate to take away from Mr. Butler  
25 or Mr. Wasserman. You know, you made them a proposal. So



1       why don't we just take this as you're giving me notice of  
2       what you are talking about, and why don't you all talk about  
3       it.

4                   MR. ROZENDAAL: Understood. Thank you, your  
5       Honor.

6                   MR. GARR: Just in the interests of disclosure,  
7       we have not talked about this with the other side, but there  
8       is a licensing issue with Samsung Display as well, so I  
9       think we'll participate in those conversations.

10                  THE COURT: All right. Why don't you all  
11       participate in the conversation and I expect you'll reach  
12       some reasonable result. So thank you, Mr. Rozendaal.

13                  Is there anything else anybody wants to bring  
14       up? Okay.

15                  Well, nice to see you. And so the transcript  
16       will serve as the order of the Court if it should be needed,  
17       although I don't think it will be. Okay.

18                  (Counsel respond, "Thank you, your Honor.")

19                  (Conference concluded at 1:58 p.m.)

20                               - - -